to the deceased of which notice had not been given under section 187(3) of the Code. The short answer to that is that there is nothing in section 187(3) of the Code that requires that in such a circumstance a fresh notice has to be given to the accused or his advocate to recall a witness who has already given evidence. As we have earlier said, to permit a witness to be recalled and the admission of his evidence are matters eminently for the trial Judges.

Finally, we would observe that in the oral Grounds of Decision of the President of the trial Court, the trial Judges had relied not on the evidence of Dr. Chng, but on the expert evidence of the forensic pathologist, Dr. Wee Keng Poh, that the fatal stab wound inflicted by the appellant on the deceased was sufficient in the ordinary course of nature to cause his death. So, on the assumption that the evidence given by Dr. Chng on his recall should not have been admitted at the trial, we are satisfied that it has not occasioned a failure of justice.

For all these reasons, we dismissed the appeal.

Appeal dismissed.

Solicitors: *Amarjit, Rubin & Partners.*

V.M. PEER MOHAMED v. THE GREAT EASTERN LIFE ASSURANCE CO. LTD.

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.) September 9, 1982]

[Singapore – Civil Appeal No. 60 of 1981]

Landlord and Tenant – Monthly tenancy – Agreement between tenant as vendor and appellant as purchaser for sale of all fixtures and furniture in the said premises – Whether agreement amounted to assignment of tenancy

On December 9, 1953 one Abdullah was the tenant under an oral monthly tenancy of No. 449 East Coast Road, Singapore (the premises) and the Great Eastern Life Assurance Co. Ltd. the respondents were the landlords. On that day Abdullah "as vendor" entered into an agreement under seal with the appellant as "purchaser". The said agreement provided that the "the vendor agreed to sell to the purchaser all fixtures and furniture in the said premises and the purchaser agreed to purchase the same for the sum of $3,300.00". The vendor covenanted with the purchaser that he had power to transfer the tenancy of the said premises into his own name.

The appellant asserted that he attempted to transfer the tenancy of the premises to his own name. This was rejected by the trial judge who also found that all future rent receipts were made out in the name of Abdullah.

The sole issue in this appeal was whether on the true construction of the Deed, the tenancy of the premises had been transferred by way of assignment to the appellant by Abdullah.

The High Court concluded that under the document the tenancy of the premises had not been assigned by Abdullah to the appellant and further held that it was merely an agreement evidencing the sale of the furniture and fittings on the premises by Abdullah to the appellant. The appellant appealed.

Held, dismissing the appeal: (1) there is no ambiguity in the operative part of the Deed. It transfers the property in the fixtures and fittings on the premises and nothing else to the appellant;

(2) if the latter part of the Recitals referring to the said agreement of the parties that Abdullah shall cease to be the principal tenant of the premises can be said to be ambiguous in so far as a transfer of the tenancy is concerned, the ambiguity is resolved by the clear words in the operative part where it is stated that the appellant "would undertake on his own account to have the tenancy transferred into his own name".

Case referred to:

(1) *Ex Parte Dawes*; *In Re Moon* 17 Q.B.D. 275 at 289.

COURT OF APPEAL.

J.B. Jeyaretnam for the appellant.

Kirpal Singh for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the Judgment of the Court): On December 9, 1953 one D. Abdullah was the tenant under an oral monthly tenancy of No. 449 East Coast Road, Singapore (the premises) and the Great Eastern Life Assurance Company Limited, the respondents in this appeal, were and still are the landlord of the premises. On that day D. Abdullah "as Vendor" entered into an "Agreement" under seal with the appellant, Peer Mohamed "as Purchaser".

The material recitals in the deed read as follows:–

"WHEREAS the Vendor is the principal tenant of premises situate and known as No. 449 East Coast Road, Singapore . . . AND WHEREAS the Vendor . . . has agreed to sell to the Purchaser all fixtures and furniture in the said premises and the Purchaser has agreed to purchase the same for the sum of Dollars three thousand three hundred ($3,300) and it is further agreed that the Vendor shall cease to be the principal tenant of the said premises . . .".

The material operative part of the deed states as follows:–

"NOW THIS AGREEMENT WITNESSETH as follows:-

1. In consideration of the sum of Dollars three thousand three hundred ($3,300) now paid by the Purchaser to the Vendor . . . the Vendor . . . hereby assign unto the Purchaser all furniture and fixtures on the said premises and do hold the same unto the Purchaser absolutely.
2. The Vendor . . . covenant with the Purchaser that he has power to transfer the tenancy of the aforesaid premises into his own name.
3. The Purchaser agrees with the Vendor . . . that he will undertake on his own accord to have the tenancy transferred into his name and all expenses incurred shall be borne by him."

The appellant's assertion that he attempted to transfer the tenancy of the premises to his own name was disbelieved by the trial judge who also found that all future rent receipts were made out in the name of D. Abdullah.

The sole issue in this appeal is whether on the true construction of the deed the tenancy of the premises had been transferred by way of assignment to the appellant by D. Abdullah. It is conceded on behalf of the appellant that a transfer of the tenancy by way of an assignment would have to be made by deed.

The High Court came to the conclusion that under the document the tenancy of the premises had not been assigned by D. Abdullah to the appellant and held that it was merely an agreement evidencing the sale of the furniture and fittings on the premises by D. Abdullah to the appellant.

We agree with the conclusion and finding of the High Court. The rules applicable to the construction of such an instrument as the one under consideration are set out in the judgment of Lopes, L.J. in *Ex Parte Dawes. In Re Moon*[1]:-

"There are several well-established rules applicable to the construction of deeds. One is this, that, if the operative part of a deed is clear, and the recitals are not clear, the operative part must prevail. Again, if the recitals are clear, but the operative part is ambiguous, the recitals control the operative part. If, again, the operative part and the recitals are both clear, but the one is inconsistent with the other, the operative part must prevail."

In the present case, we are of the opinion that there is no ambiguity in the operative part of the deed. It transfers the property in the fixtures and fittings on the premises and nothing else to the appellant. Similarly, in our opinion, the recitals are clear. They state that D. Abdullah has agreed to sell the fixtures and fittings to the appellant. If the latter part of the recitals referring to the agreement of the parties that D. Abdullah shall cease to be the principal tenant of the premises can be said to be ambiguous in so far as a transfer of the tenancy is concerned, the ambiguity is resolved by the clear words in the operative part where it is stated that the appellant "would undertake on his own account to have the tenancy transferred into his own name."

Accordingly, the appeal must be dismissed with costs.

Appeal Dismissed.

Solicitors: *J.B. Jeyaretnam & Co.; Kirpal Singh & Co.*

LOW KOK TONG v. TEO CHAN PAN

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.) September 17, 1982]

[Singapore – Civil Appeal No. 57 of 81]

Damages – Death – Claim for loss of future earnings – No available evidence for assessment – Claim rejected – Appeal – Appeal allowed – Gammell v. *Wilson followed – Civil Law Act (Cap. 30), s. 8.*

The appellant, administrator of the deceased estate claimed for loss of future earnings due to the estate of the deceased under section 8 of the Civil Law Act (Cap.30). The deceased died from injuries sustained in an accident between a military truck, in which he was travelling, and a motor lorry. He was 20 years old and in national service. He received a gross monthly pay of $122.47. The mother said that the deceased had told her that he was going to sign on as a regular for 6 years. She also said that he had attended night classes doing electrical course.

The High Court dismissed the claim (see [1982] 1 M.L.J. 62) and held that the available evidence for assessment of damages was meagre and contradictory. It was not possible therefore even to begin to make an estimate of the probable future earnings of the deceased. The appellant appealed.

Held, allowing the appeal: the appellant would be awarded $27,000.00 as loss of future earnings for the "lost years" on the basis of a multiplier of 15 years at an earning after expenses of $150/- per month.

Per Curiam: "On the basis of our doctrine of binding precedents, it is axiomatic that any decision of the House of Lords is not binding on us. But such a decision on an English provision similar in all material respects to our own is highly persuasive and should be adopted unless it is unacceptable in principle. Although Lord Diplock and some other Law Lords had made certain reservations on the decision in *Gammell's case* and had called for legislative